

Agenda Item Form

Agenda Date: 06/15/04

Districts Affected: 03

Dept. Head/Contact Information: Patrick T. Abeln, A.A.E. 780-4736

Type of Agenda Item:

- | | | |
|---|---|--|
| <input checked="" type="checkbox"/> Resolution | <input type="checkbox"/> Staffing Table Changes | <input type="checkbox"/> Board Appointments |
| <input type="checkbox"/> Tax Installment Agreements | <input type="checkbox"/> Tax Refunds | <input type="checkbox"/> Donations |
| <input type="checkbox"/> RFP/ BID/ Best Value Procurement | <input type="checkbox"/> Budget Transfer | <input type="checkbox"/> Item Placed by Citizen |
| <input type="checkbox"/> Application for Facility Use | <input type="checkbox"/> Bldg. Permits/Inspection | <input type="checkbox"/> Introduction of Ordinance |
| <input type="checkbox"/> Interlocal Agreements | <input type="checkbox"/> Contract/Lease Agreement | <input type="checkbox"/> Grant Application |
| <input type="checkbox"/> Other _____ | | |

Funding Source:

- ☐ General Fund
☐ Grant (duration of funds: _____ Months)
☐ Other Source: _____

Legal:

- ☒ Legal Review Required Attorney Assigned (please scroll down): Sylvia Firth ☒ Approved ☐ Denied

Timeline Priority: ☒ High ☐ Medium ☐ Low # of days: _____

Why is this item necessary:

Authorize Five (5) Lessor's Approval of Assignments

Explain Costs, including ongoing maintenance and operating expenditures, or Cost Savings:

None

Statutory or Citizen Concerns:

None

Departmental Concerns:

Remarks: TIAA Realty, Inc., ("Lessee") is requesting Lessor's Approval of Assignments of the Butterfield Trail Industrial Park Leases covering the properties located at #3 Butterfield Trail, #7 Leigh Fisher, #11 Leigh Fisher, #15 Zane Grey and #25 Butterfield Trail to W2001 TBT Real Estate Limited Partnership, ("Assignee"). There will be no changes to the agreement covering the property located at #3 Butterfield Trail, however new leases covering the remaining four (4) properties will be submitted for consideration.



El Paso International Airport

TO: Mayor Joe Wardy
Jim Martinez, CAO
City Council Representatives

FROM: Patrick T. Abeln, A.A.E.
Director of Aviation

DATE: June 9, 2004

SUBJECT: LESSOR'S APPROVAL OF ASSIGNMENT FOR THE GROUND LEASES
BETWEEN CITY OF EL PASO, (LESSOR) AND TIAA REALTY, INC.,
(LESSEE) AND W2001 TBT REAL ESTATE LIMITED PARTNERSHIP
(ASSIGNEE)

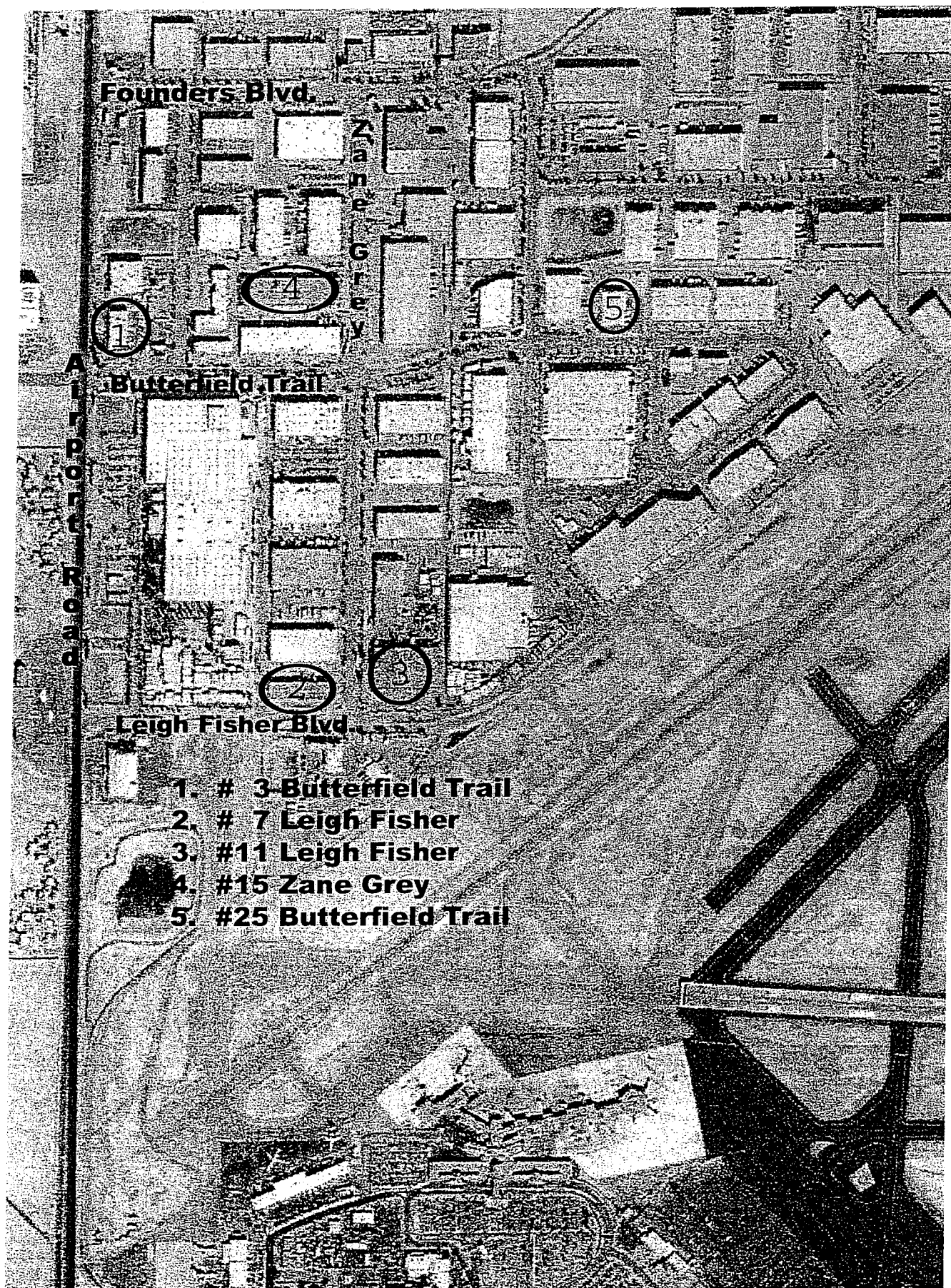
BACKGROUND:

TIAA Realty, Inc., currently leases the following five (5) sites in Butterfield Industrial Park.

- 1) **#3 Butterfield Trail.** Portions of Lots 4 and 5, Block 6, Butterfield Trail Industrial Park, Unit One, Replat "A", City of El Paso, El Paso County, Texas.
- 2) **#7 Leigh Fisher.** A portion of Lot 5, Block 1, Butterfield Trail Industrial Park, Unit One, Replat "A", City of El Paso, El Paso County, Texas.
- 3) **#11 Leigh Fisher.** Portion of Lot 5, Block 8, Butterfield Trail Industrial Park, Unit One, Replat "A" and all of Lot 6, Block 8, Butterfield Trail Industrial Park, Unit One, Replat "B", City of El Paso El Paso County Texas.
- 4) **#15 Zane Grey.** Portions of Lots 4, 5, 6 and 7, Block 2, Butterfield Trail Industrial Park, Unit One, Replat "A", City of El Paso, El Paso County, Texas.
- 5) **#25 Butterfield Trail.** Lot 1, Block 11, Butterfield Trail Industrial Park, Unit Two, Foreign Trade Zone #68, City of El Paso, El Paso County, Texas.

All sites are improved with administrative offices, warehouse and/or manufacturing facilities and occupied by various subtenants. The following chart lists the current lease information of the referenced properties. Also, an attachment is provided to assist with locating the properties within the Butterfield Trail Industrial Park.

Location	Effective Date	Next Rental Adjustment Date	Expiration Date	Lease d Premises	Rate (PPSF)	Annual Rent
#3 Butterfield Trail	03/01/1983	03/01/2013	02/28/2023	132,000	\$0.141	\$18,616.50
#7 Leigh Fisher	05/01/1983	05/01/2013	04/30/2021	121,286	\$0.138	\$11,643.49
#11 Leigh Fisher	07/01/1983	07/01/2013	06/30/2021	245,056	\$0.158	\$38,719.08
#15 Zane Grey	07/01/1983	07/01/2013	06/30/2021	234,330	\$0.121	\$28,557.60
#25 Butterfield Trail	11/01/1982	11/01/2012	10/31/2022	119,907	\$0.161	\$19,305.00



1. # 3 Butterfield Trail
2. # 7 Leigh Fisher
3. #11 Leigh Fisher
4. #15 Zane Grey
5. #25 Butterfield Trail

Rental adjustments are due at each 10-year anniversary and equal to 8% of the then fair market value, capped at 20%. All leases contain one 10-year option for renewal at which time the rent is to be adjusted to 8% of the fair market value, including improvements, without regard to the 20% rent limitation.

ANALYSIS:

TIAA Realty, Inc. desires to sell its improvements located on the leased land to W2001 TBT Real Estate Limited Partnership, a holding company established by Archon Acquisition, L.L.C., to act as Lessee for all five (5) leases. Archon is a global real estate industry leader and affiliated with the Goldman Sachs Group, Inc.

W2001 TBT Real Estate Limited Partnership is requesting that the agreement covering the property located at #3 Butterfield Trail be handled as a straight assignment with no changes to the terms of the current Lease Agreement.

With regard to the remaining 4 leases, Assignee has requested the old leases be replaced with new Butterfield Trail Industrial Park leases with a standard term of 40 years with one 10-year option. In doing so, Assignee will receive a new term suitable to meet its investment criteria and the benefit of its existing rental rate until July 1, 2013, at which time, the rental rates will be adjusted to a full 8% of the then Fair Market Value, without adjustment limitations. The City, therefore, will receive the benefits of a new updated lease form and a substantial monetary gain over the rents due in the existing leases.

RECOMMENDATION:

The Department of Aviation recommends approval of the Lessor's Approval of Assignments. The assignments were presented to and approved by the Airport Board on May 25, 2004 and the documents have been reviewed and approved as to form by the City Attorney's office. The items have been placed on the City Council agenda of June 15, 2004 for your consideration.

Attachment

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to sign a Lessor's Approval of Assignment by and between the City of El Paso ("Lessor"), TIAA Realty, Inc. ("Assignor") and W2001 TBT Real Estate Limited Partnership ("Assignee") for the property described as a portion of Lot 5, Block 8, Butterfield Trail Industrial Park, Unit One, Replat "A" and all of Lot 6, Block 8, Butterfield Trail Industrial Park, Unit One, Replat "B", City of El Paso, El Paso County, Texas, municipally known and numbered as #11 Leigh Fisher Blvd., El Paso, Texas.

ADOPTED this the 15th day of June 2004.

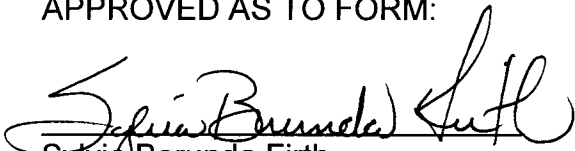
THE CITY OF EL PASO

Joe Wardy
Mayor

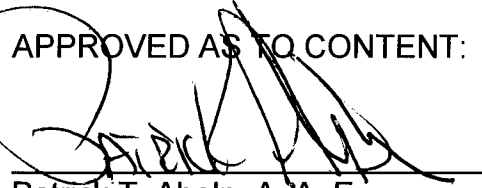
ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:


Sylvia Borunda Firth
Assistant City Attorney

APPROVED AS TO CONTENT:


Patrick T. Abeln, A. A. E.
Director of Aviation

ORIGINATING DEPARTMENT: AIRPORT

STATE OF TEXAS §
 § LESSOR'S APPROVAL OF ASSIGNMENT
COUNTY OF EL PASO §

The City of El Paso ("Lessor") entered into a Butterfield Trail Industrial Park Lease dated July 1, 1983, between the Lessor and Urban General Contractors, Inc., as amended by that certain First Amendment to Lease dated February 21, 1984; subsequently assigned to Kasco Venture, Butterfield 6, consented to on February 28, 1984; and by that certain Second Amendment to Lease dated March 22, 1986; subsequent possession by Teachers Insurance And Annuity Association of America effective July 2, 1991 pursuant to Article IX, Section 9.03 of the Lease and subsequently assigned on December 15, 1998 to TIAA Realty, Inc. ("Assignor") (hereafter referred to collectively as the "Lease") for the property described as:

A portion of Lot 5, Block 8, Butterfield Trail Industrial Park, Unit One, Replat "A" and all of Lot 6, Block 8, Butterfield Trail Industrial Park, Unit One, Replat "B", City of El Paso, El Paso County, Texas, municipally known and numbered as #11 Leigh Fisher Blvd., El Paso, Texas ("Premises").

1. **CONSENT TO ASSIGNMENT.** Lessor hereby approves and consents to the assignment of the Assignor's interest in the Lease from Assignor to W2001 TBT Real Estate Limited Partnership, a Delaware limited partnership ("Assignee"), on the condition that Assignee assumes and becomes liable to pay any and all sums owing or becoming due Lessor under terms of the Lease from and after the effective date of the assignment of the Lease to Assignee, and upon the further condition that Assignee agree to accept and abide by all the terms, covenants, and conditions of the Lease.

This consent releases Assignor from any liability or responsibility under the Lease as of the effective date of the assignment. Assignor will not be responsible to Lessor for any default or breach on the part of Assignees. This consent will not be construed as a waiver of any rights Lessor may have by reason of the past performance of Assignor, nor as an estoppel of the assertion of any rights by Lessor against Assignor. No provision of this consent alters or modifies any of the terms and conditions of the Lease.

2. **PROOF OF INSURANCE AND INDEMNIFICATION.** Assignee has provided a certificate of insurance to evidence compliance with the insurance requirements of the Lease and expressly agrees to be bound by the indemnification provisions contained in the Lease.

4. **RATIFICATION OF AGREEMENT.** No provision of this consent alters or modifies any of the terms and conditions of the Lease. Except as expressly modified herein, all terms and conditions of the Lease shall remain in full force and effect.
3. **SURRENDER OF LEASE.** The Lessor's approval and consent to this assignment is expressly contingent upon the Assignee's agreement to enter a new lease with Lessor covering the Premises with an effective date of July 1, 2004. Upon execution and delivery of the new lease by Assignee, the Lessor shall accept a surrender of the Lease and all of Assignor's future responsibility with regard to the Lease shall terminate.
4. **ADDRESS FOR NOTICE.** Notices to Assignee shall be sufficient if sent by certified mail, postage prepaid, addressed to:

W2001 TBT Real Estate Limited Partnership

ATTN: _____

6. **AUTHORIZED REPRESENTATIVE.** The person signing this Lessor's Approval of Assignment on behalf of the Assignee represents and warrants that he or she has the authority legally to bind the Assignee to the provisions of this Lessor's Approval of Assignment.
7. **NON-WAIVER.** The Lessor's Approval of Assignment hereby given by Lessor shall not end the need for Lessor's consent for any future assignments.

The parties have executed this Lessor's Approval of Assignment hereto this 15th day of June 2004.

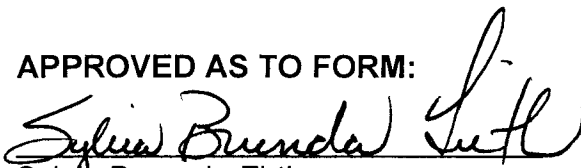
ATTEST:

LESSOR: CITY OF EL PASO:


Richarda Duffy Momsen
City Clerk

Joe Wardy
Mayor

APPROVED AS TO FORM:


Sylvia Borunda Firth
Assistant City Attorney

APPROVED AS TO CONTENT:

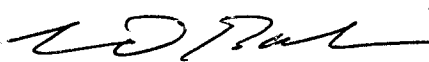

Patrick T. Abeln, A.A.E.
Director of Aviation

(SIGNATURES CONTINUE ON FOLLOWING PAGE)

ATTEST:

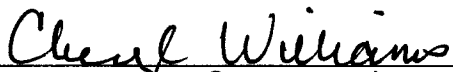
Printed Name: _____

ASSIGNOR: TIAA REALTY, INC., A
DELAWARE CORPORATION

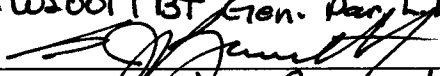


Printed Name: LEONARD BALDUCCI
~~ASSISTANT SECRETARY~~
Title: ~~Teachers Insurance and Annuity~~
~~Association of America, a New~~
~~York Corporation, its authorized~~
~~representative.~~

ATTEST:


Printed Name: Cheryl Williams

ASSIGNEE: W2001 TBT REAL ESTATE
LIMITED PARTNERSHIP, A
DELAWARE LIMITED
PARTNERSHIP

By: W2001 TBT Gen. Par. L.P.C., general partner

Printed Name: Joe Barrett
Title: Asst. Vice President

ACKNOWLEDGEMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____, 2004, by Joe Wardy as Mayor of the City of El Paso, Texas ("Lessor").

My Commission Expires: _____

Notary Public, State of Texas

(ACKNOWLEDGMENTS CONTINUE ON FOLLOWING PAGE)

ACKNOWLEDGEMENT

THE STATE OF NEW York
COUNTY OF New York

This instrument was acknowledged before me on this 5th day of June, 2004, by LEONARD BALDUCCI ASSISTANT SECRETARY as _____ of TIAA REALTY, INC., A Delaware Corporation ("Assignor").

My Commission Expires:
1/12/2006

Loretta M. Monahan
LORETTA M. MONAHAN, Notary Public, State of New York
Notary Public, State of N.Y.
No. 01M06001475
Commission Expires 1/12/2006

ACKNOWLEDGEMENT

THE STATE OF Texas
COUNTY OF Dallas

This instrument was acknowledged before me on this 9 day of June, 2004, by Joe Berrett as Asst. Vice Pres. of W2001 TBT, REAL ESTATE LIMITED PARTNERSHIP, A Delaware Limited Partnership ("Assignee"). Gen. Par, L.L.C.

My Commission Expires:
9-21-06

[Signature]
Notary Public, State of Texas